

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
August 23, 2019
Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: Michael Timmons, Chair, William McFarland, Edward Kelleher, James Kelley, Jr., and Richard Shiers

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, and Joy Bonenfant

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

None.

Review and Approval of Decision and Orders

None.

3. Adjudicatory Hearings:

- a. RE: David White, Complaint Number 2018 MSHRC 08.** Mr. White is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. White is the trainer of record for the horse, “Kaladar”. A blood sample obtained from Kaladar following the Fourth Race at Scarborough Downs on July 1, 2018, showed an elevated level of dexamethasone.
- AAG, Guay opened the hearing on David White. David White was present and represented himself. AAG, Guay gave Mr. White his oath. He qualified the Commissioners. He stated to the Commissioners the matter you are going to be hearing today is whether or not Mr. White violated the prohibited substance rule for a violation which would have occurred during the 4th race at Scarborough Downs on July 1, 2018. Commissioners do you have any first hand knowledge regarding the reported violation as he just described. Commissioners stated no. AAG, Guay asked Mr. Jennings if he had any exhibits. Mr. Jennings moved for the admission of exhibits 1 through 7. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; and Exhibit 7, LGC Certificate of Analysis. AAG, Guay asked Mr. White if he objected to the exhibits. Mr. White stated no. AAG, Guay admitted the exhibits. He asked Mr. White if he had any exhibits. Mr. White had none. AAG, Guay asked Mr. White if he stipulated to the following questions. Do you admit that the horse “Kaladar” raced during the 4th race at Scarborough Downs on July 1, 2018, and do you admit that you were the trainer of record for the horse “Kaladar” on July 1, 2018? Mr. White stated yes to both. AAG, Guay asked Mr. White do you admit that the horse “Kaladar” on July 1, 2018 had in its system an elevated level of dexamethasone. Mr. White stated he does not. AAG, Guay stated the prohibited substance rule says that there is a permitted medication schedule and the permitted medication schedule allows for certain blood concentrations of these drugs in an animal. A prohibited substance can be a permitted medication if it’s been given in too high a dose, and what the Commission has determined is that if the blood concentrations are too high than that’s prohibited. It doesn’t mean that it’s unpermitted. There’s actually permitted medications and permitted substances. No one is saying that this is Cobalt or anything like that. Are there any objections. Mr. Jennings stated no, and Mr. White stated no. AAG, Guay asked Mr. Jennings for an opening statement. Mr. Jennings stated the laboratory in question was LGC

Laboratory in Kentucky that was one of the last tests that they got done testing for us in July of 2018. They had a very good track record. Whenever their results were challenged by a referee lab, he's not aware of a single case in which their track record was not essentially affirmed within a reasonable tolerance of variations between laboratories. Mr. White did not request a split sample in this case, so it wasn't challenged. AAG, Guay asked Mr. White if he had an opening statement. Mr. White stated that he would wait until Mr. Jennings puts his case on. Mr. Jennings had no witnesses. Mr. White stated he did not have any witnesses. He's been racing Kaladar in the State of Maine since 2013. He's gone to test many times and the horse has been treated the same every week, so it's a shock to him that his level could possibly be 33. He's raced almost 1,000 starters in the State of Maine now. Over 300 of those horses have been tested. He never gets positives he doesn't make mistakes. He couldn't have possibly done anything to get his level that high. He's talked to veterinarian around Bangor and they say he would have had to give the horse 30 to 40 ccs. He doesn't know how that level got that high. He does question the level. AAG, Guay stated that this is an opportunity for the Commissioners to ask questions. Commissioner Kelleher asked Mr. White where he stables his horses. Mr. White stated at Bangor Raceway. Commissioner Shiers asked Mr. White was you racing your horse twice a week or just once a week. Mr. White stated his horse wasn't sound enough to race twice a week. He raced maybe every 10 days. Commissioner Shiers asked if he had anything else in his horse besides dexamethasone. Mr. White stated absolutely not. Mr. Jennings asked Mr. White who administers the dexamethasone because you said the horse gets the same treatment every week. Mr. White stated they do it themselves. There's no vet available at the racetrack to do that kind of thing. That way they know exactly what's in them. Mr. Jennings asked how do you administer the dexamethasone. Mr. White stated this horse gets powder he assumes. Mr. Jennings asked how does he determine what amount to give it. Mr. White stated it tells you in milligrams on the package. They give 72 hours it says in the rules, so you're not allowed to give it any closer than that, so they put it in the feed at 72 hours and they pull him away to make sure that he doesn't get any more. Mr. Jennings asked if that is something that you measure yourself. Mr. White stated yes. AAG, Guay asked a clarifying question. You said the rule says 72 hours. Are you talking about the permitted medications? Mr. White stated the permitted medication you're allowed to give x number of milligrams 72 hours. AAG, Guay asked what's the date of the violation. Mr. Jennings stated that they did change the rule. The date of the most recent rule is January 2019. This violation occurred in 2018. AAG, Guay stated so this violation occurred when the rule was different, so if the Commissioners were to look right now, they will not see the rule he's referencing. Just for clarification. Commissioner Shiers stated that it wasn't clear we have therapeutic permitted medication. The rules are very clear in this book. Anything over what the allowable is considered illegal substance it's not an extension of permissible medication it's an illegal substance in the horse. Mr. Jennings stated it is a violation of the prohibited substance rule to have for a horse to carry in its system a level of a permitted medication above the threshold. Commissioner Shiers disagreed with that. It's clearly in the book. Anything over the permitted limit is illegal. Mr. Jennings stated he thinks they might be saying the same thing. He just said it in a different way. AAG, Guay stated just to be clear. You said it was powdered form it's not injected. Mr. White stated yes and no. AAG, Guay asked for a closing statement. Mr. Jennings stated that he's been coming to these meetings for 4 years plus now adjudicating these cases and he has heard a lot of horsemen make similar statements and he thinks horsemen believe that they are doing the best they can to make sure they don't violate the prohibited substance rule. He thinks when the horsemen are administering dexamethasone themselves that it is possible to make a mistake and it could result in a level that's above the threshold. It's also possible that there's something going on with the horse that changes its ability to metabolize to excrete or otherwise rid the body of compounds. AAG, Guay stated that he's not going to let you unless you raise your hand and

be subject to cross examination. Do you have an exhibit number you'd like to point to? Mr. Jennings stated exhibit 7. AAG, Guay stated to Mr. White to make an argument again. The question the Commission is going to decide is whether or not the horse had in its system a prohibited substance. Mr. Jennings is saying that exhibit 7 proves that. Mr. White stated that there was no intention to have an elevated level of anything in his horse. The test shows it's there, but he didn't intend for it to be there. He's not sure how the level got that high. He doesn't have the funds for a split sample, or he probably would have had one done. He going to leave it up to the Commission to look at his record and see that he doesn't come here often, and this is clearly an accident. AAG, Guay turned it over for deliberations. Commissioner Timmons asked for any comments or to make a motion. Commissioner McFarland made a motion that a violation has occurred. Commissioner Kelleher seconded. Vote 5-0. AAG, Guay stated they will go to the second phase. The rule provides guidelines. There are no mandatory fines or penalties. The rule states that the Commission considers mitigating circumstances, so it's almost always the second hearing is a discussion of mitigating circumstances to the extent the department would have evidence of aggravating factors the department could present that evidence as well. He asked Mr. Jennings if he had a recommendation. Mr. Jennings stated that the department finds that dexamethasone is categorized by ARCI as a category IV drug which results in a penalty Class C because that is where the other medications are except for the NSAIDs at the lower level. They would recommend the minimum penalty prescribed for Chapter 17 which is \$500.00. AAG, Guay stated to Mr. White this is his chance. Mr. White stated that \$500 sounds a little steep for someone who doesn't get positives. It's up to the Commissioners. AAG, Guay closed the hearing. Commissioner Timmons asked if any Commissioners had anything. Commissioner Kelley asked Mr. Jennings if this was his first offense in 365 days. Mr. Jennings stated that was correct. Commissioner Timmons asked for a motion. Commissioner Shiers made a motion that Mr. White pay a fine of \$500.00 for exceeding the limit of dexamethasone. Commissioner Kelley seconded. Vote 5-0. AAG, Guay stated that the next step is he will be writing up the decision and order. Commissioners will review it and then they will vote on the decision and order hopefully at the next meeting. Mr. White will have 30 days to appeal the decision and order.

- b. RE: David White, Complaint Number 2018 MSHRC 17.** Mr. White is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. White is the trainer of record for the horse, "Moonlightandroses". A blood sample obtained from Moonlightandroses following the Second Non-Betting Race at Scarborough Downs on September 29, 2018, showed an elevated level of mepivacaine. AAG, Guay opened the hearing on David White complaint number 2018 MSHRC 17 and he's going to note that he already qualified the Commissioners and there were no conflicts. The allegation is that on September 29, 2018 Mr. White was the trainer of record of the horse "Moonlightandroses" had an elevated level of mepivacaine. Does any Commissioners have any direct knowledge of any of these alleged facts that would prevent you from hearing the evidence in a fair and unbiased matter? Commissioners stated no. AAG, Guay stated for the record the department has just informed him that the agenda says Scarborough but actually it was Cumberland. He asked the Commissioners if it made a difference if it happened at Scarborough or Cumberland if you had knowledge of this case. Commissioners stated no. Mr. Jennings moved for the admission of the following exhibits 1-7. Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test Letter; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; and Exhibit 7, University of Illinois at Chicago Certificate of Analysis. AAG, Guay asked Mr. White if he had any objection to the exhibits. Mr. White stated no. AAG, Guay admitted the exhibits. He asked Mr. White if he admitted to being the trainer of record for the horse "Moonlightandroses" on September 29, 2018 and whether the horse finished 1st in the second non-betting race at the Cumberland Fair on

September 29, 2018. Mr. White admitted to both. He did not admit to the horse having an elevated level of mepivacaine in its system. There was no objection to the proceeding so far. Mr. Jennings stated this is a very standard case and relies on the same sets of documents. There was not a split sample in this case. AAG, Guay asked Mr. White if he wanted to say anything right now. Mr. White stated that Mr. Jennings could go first. Mr. Jennings had no witnesses. He was relying on the documents. Mr. White stated from the evidence here the tag that was taken the day that the mare raced he could not read who signed the slip, and there was no license number. He had several horses in that day. Whoever drew the blood didn't make sure that they signed their name and put their license number. AAG, Guay asked if any Commissioner had questions of Mr. White. There were none. Mr. Jennings had no questions for Mr. White. AAG, Guay asked Mr. White which exhibit he is referring to. Mr. White stated exhibit 5. AAG, Guay asked Mr. White if he signed this. Mr. White did not. He was on the track. AAG, Guay asked the names of his grooms. Mr. White stated Eric Wilson was his groom. AAG, Guay gave Mr. Greenleaf his oath. Mr. White asked Mr. Greenleaf if he would feel comfortable having somebody have a sample taken from your horse and not putting their proper identification down. Mr. Greenleaf stated if it was a groom that he hired yes, he would. If it was a groom that he was paying to take care of his horse yes, he would. Commissioner Shiers stated to Mr. White that it is still trainer responsibility they work for you, you pay them it's your responsibility to make sure they put their license number down. AAG, Guay had a question for Mr. Greenleaf. What is the basis of your knowledge, what do you do for the department? Mr. Greenleaf stated that he supervises the field staff, he's assisted on having those cards signed, assisted with the blood draw but he never drew the blood. AAG, Guay asked if he is familiar with chain of custody. Mr. Greenleaf stated yes. AAG, Guay to your knowledge is there any policy or rule that absolutely requires the chain of custody or license number to be put on this card. Mr. Greenleaf stated a license number no, but a signature yes. AAG, Guay stated that it's your testimony that your internal procedures require only a signature. Mr. Greenleaf stated requires a signature yes. Mr. Jennings asked Mr. Greenleaf in the state regulations pertaining to testing and trainer responsibility is there a piece of law that requires a license number to be entered. Mr. Greenleaf stated no. Mr. Jennings is there a policy that would require a license number. Mr. Greenleaf stated no. Mr. Jennings asked when a license number is entered who enters that. Mr. Greenleaf stated the person signing the card. Mr. Jennings asked they would do that because they would likely know the license number. Mr. Greenleaf stated correct. Mr. Jennings asked would the state testing vet know the license numbers of all of the people in the paddock. Mr. Greenleaf stated no. AAG, Guay stated that the state has rested and now to closing statements. Mr. Jennings would look to the laboratory certificate which would be exhibit 7 as evidence that a violation has occurred. He would remind the Commission that the burden of proof in these types of cases they're civil matters and therefore is a preponderance of evidence which is often described as 50.0001 percent of the evidence indicating a violation is more likely as in slightly more evidence that a violation has not occurred. AAG, Guay stated as the lawyer for the Commission his responsibility is to the extent there is legal advice slightly correct what Mr. Jennings said. He agrees that administrative procedures it is a preponderance of the evidence in this proceeding specifically there is something known as a rebuttable presumption and in the law what that means under your law if a lab test shows the substance is in the horse then you consider it to be true and the burden is shifted on the licensee to prove by a preponderance of the evidence that the animal did not have in its system. He agrees with the preponderance of the evidence, but he instructed the Commission on this before. Mr. Jennings does not need to prove that the animal had a prohibited substance instead Mr. White has to prove, and the reason he does not have to is because to the extent that you find that there is a lab test puts the burden on the licensee to prove that it wasn't in the horse. Mr. White stated without a split sample there's nothing to prove. All he can say is he doesn't know what mepivacaine is called. He has no

idea how it got in his horse. He would say there is contamination, or someone gave him a little help since he was stabled at a public stable with no security which he is no longer stabled there because he has no confidence in the place. He has no evidence saying it wasn't there. He did not put it there. He is no longer stabled at Bangor Raceway because he doesn't feel comfortable stabled in there anymore with things like this happening. He doesn't push the envelope to get positives. AAG, Guay stated that you made an agreement that could have defeated it which is chain of custody. Which is probably the only way you can defeat the burden. He's not saying you proved it, but you were making that argument. He closed this portion of the hearing. The proper form of the motion would be whether or not there was a violation pursuant to exhibit one charging document. Commissioner Kelley stated that he is not a veterinarian, but that drug is simple terms a long acting Novocain. Mr. White stated that he talked with Dennis the vet in Bangor and he said the only way that vet would have given him any benefit in the race is if he had of injected the horse in the paddock because it doesn't last any more than 2 hours. It stays in the system 72 hours, but it leaves no benefit after two hours. Commissioner Timmons stated that he agreed with what Commissioner Kelley said and this substance is very serious and should not be in any horse. It did appear and the trainer's responsible and therefore he thinks they can look at what the Commission wants to do and what the penalties would be. AAG, Guay stated so you find a violation. Commissioner Timmons stated yeah, we'll find that first. Commissioner Shiers stated that he finds Mr. White's testimony a little bit unbelievable. Mr. White stated how's that. Commissioner Shiers stated this is a very serious drug. This is a block. It's illegal to race a horse in the State of Maine with a block. Mr. White stated that he would never do that. Commissioner Shiers stated that it violates about 3 chapters in this book and he could argue this is a level I offense because you've got fraud involved. AAG, Guay stated that he doesn't like to do this but he's going to suggest to the Commissioners to the extent you have views on that you might do that in the second phase. Right now, the question is whether or not there was a violation not the seriousness of the thing. Commissioner Shiers stated that he would hold his testimony for the second phase. Commissioner Kelleher stated that he would move there was a violation of the law. Commissioner McFarland seconded. Commissioner Timmons asked for a vote. Vote 5-0. AAG, Guay stated they will move to the second phase. He asked the department if they had any recommendations one way or another. Mr. Jennings stated that the commission has taken a position that drugs in different penalty classes are not added in terms of number of violations within a 365 day period and there's a strong logic to that because you could have warnings on Bute and then all of a sudden, an A and it would bump it up unreasonably. They consider this a first offense because this one is actually now in the Class B penalty category and because of that they are recommending the minimum penalty which is \$500 and a 15 day suspension. AAG, Guay stated technically it would be better to hear from the licensee and then give both of them an opportunity to answer. Mr. White stated they said it's a Class B then it's a Class B. He knows in his heart he didn't give it to his mare. The rule in the book says trainer responsibility. AAG, Guay asked Mr. White he's not disputing its Class B. Mr. White stated no. Commissioner Kelley asked Mr. Jennings he considers this a first offense. We just heard the other one and it was 90 days prior, so what you're telling us is if they get a violation in the different classes in a 365 period so none of them are second offenses. They're all a first offense as long as it's a different class. Is that correct. Mr. Jennings stated that is the policy that the Commission previously adopted. They articulated a rationale that he thought in so much as you could get 5 Butes and then all of a sudden get a Class A and that would have bumped you to a third violation in Class A which is look at Class A and look at 3 violations. That was the logic the Commission violated. There is nothing in rule that forces you to do it that way. Commissioner Shiers stated that he wants to stipulate that this rulebook that's put out by the State of Maine Harness Racing Commission stipulates how to interpret it and it's written in a laymen's term and it's up to the Commissioner to determine how he believes it is and he

considers this a second offense. AAG, Guay asked if there are any questions for these people before we close the hearing. There were none. He closed the hearing. Commissioner Timmons stated it would seem to him by looking at the rules that it would be a second offense. Not only a second offense but a very serious one. Commissioner Kelleher asked the opinion of legal counsel. AAG, Guay stated they are looking at Section 5 which is Chapter 11. This is guidelines. The guidelines themselves are sort of the words beneath it. What he's hearing the Commissioners question is whether or not the departments long standing interpretation of these rules would have legal support. He believes Commissioner Shiers is correct that interpretation of the laws and rules are the Commissioners responsibility. He fully agrees with that. He would also note that when he's in front of a judge the judge will also be guided by general legal principles and to the extent the Commissioners for example by statute have subject matter knowledge of what happened in harness racing. You guys can't be Commissioners unless you are qualified, so to the extent that saying that leaving a paddock is the same as not being available for testing. A judge is going to defer that. He would point out that he would be a little cautious to deviate from the departments prior interpretation and he thinks Mr. Jennings was trying to explain an example. He will give an example. There are various criminal codes like assault and drunk driving or whatever. He doesn't do criminal work, but he would say that typically a judge that would look at this would say. A first offense, a second offense refers to the offense. The question is to what degree are these penalties specific to a substance. The reason why he's saying that is if you got convicted of assault and then you're guilty and then you go into court and you're convicted of theft well that's not going to be a second offense they're both criminal violations, but it will be the first offense of theft. You'd have a prior offense of assault but it's not a second offense of theft and to the extent that these penalties are specific to types of substances there's some logic to the departments viewpoint and that doesn't mean and he's not saying you should do that here and one of the things where he's pointed out is you have a range ok. He's advised the department and he has advised the Commission. You can consider offenses that are more than a year old, but you can't count it as a second offense. But what you can do is within the range say you know what it wasn't within 365 days, but I have a range to pick from from 0 to 10 and because this person had previous violations he's going to move further up the range. That you can do. These are guidelines and you can move within the range. He would suggest to you it's more problematic. He will argue for you in front of a judge if they ever get there. It is more problematic to count that as a second offense however unless it's the same type of category. You're not limited. You can take into account and he would suggest there's been sort of this self-imposed view unless it's within 365 days we don't consider it. No. What it says is it's not a second offense. You can consider the fact that this gentleman had a prior offense. He would strongly suggest you not count it as a second offense but say we have discretion. We can move about here within a range. And because this is a second thing that has happened, we might move differently on the range. He would go to court when you guys interpret it. He's just suggesting that potentially a judge may not see it as a second offense. That's his best advice. Commissioner McFarland stated that he does believe having sat here for seven years he's heard them before, and he does believe it's reasonable for them you're here to guide them legally at least. He would like to make a comment to the other Commissioners. The fact that having sat here for as long as he has and he knows Mr. Shiers now a Commissioner we've heard some of these same concerns from people that have sat here in front of us with respect to I didn't do it I wouldn't do it and after a while you come to realize that you don't believe everybody here's dishonest in that respect and he doesn't think everybody out there is trying to beat the other guy in that respect. He thinks there is still a lot of good people in the industry. He's glad to see that this individual at least made the attempt to move away from maybe a possible trouble spot for him. He does know as being the race director at Windsor Fair one of his closest friend for many many years sat here and we had to find him guilty of something that he

would believe that he absolutely didn't do it but there were a lot of things going on at the time. With that being said obviously we've got to come up with a penalty that is reasonable. He doesn't believe this should be considered a second penalty based on our attorney's guidance and what we've considered previously. He certainly respects any and all of your comments with respect to each of these situations. That being said he would make a motion based on the guidance of their attorney that the penalty for this offense be the first offense and he's going to increase the minimum from 15 days to 30 days and the minimum fine of \$500 be increased to \$750 and fortunately for this individual under these circumstances and when this happened and the previous offense happened there is no loss of purse. If this had happened now or since June 14th there would be so that in it self is very fortunately for the individual. Commissioner Shiers seconded. Vote 3-2. Commissioner Timmons and Commissioner Kelley opposed.

- c. **RE: Ronald Dinsmore.** Mr. Dinsmore is appealing the June 26, 2019 decision of Presiding Judge Frank Hall, at Bangor Raceway, to assess a fine of \$500 fine for failing to take the horse, "Fifty Spender" for testing after it raced on June 18.
- AAG, Guay opened the matter of Ronald Dinsmore. He qualified the Commissioners. When you hear an appeal you actually hear the evidence fresh. It's called a denovo proceeding. You do not rely on Mr. Hall's decision and say Mr. Hall was wrong. You hear all the evidence and decide whether there was a violation or not. So, it's not 100 percent usual but it is not what probably most people think of as an appeal when they hear an appeal, so because of that Commissioners you need to be able to make a decision based on only what's heard here today. Only on what is said today, what is seen today, so is there any Commissioner that has any personal knowledge or witnessed any of these events that would prevent them from acting only on the evidence they hear today. He saw no Commissioners raising their hand, so they are qualified. Mr. Dinsmore was present and represented himself. He gave Mr. Dinsmore his oath. Mr. Dinsmore read rule Chapter 21, Section 14, subsection 5 regarding the order of testimony. He stated that the judge should give his testimony before him. AAG, Guay stated that under the APA he has a checklist he needs to go through first. He stated that Mr. Jennings is appearing on behalf of Presiding Judge Frank Hall. He asked for any written submission. Mr. Jennings presented and moved for the admission of the following exhibits. Exhibit 1, Notice of Hearing, Exhibit 2, Owner/Trainer Application, Exhibit 3, Race Program, Exhibit 4, Notice of Fine, and Exhibit 5, Appeal Form. AAG, Guay admitted Exhibits 1 through 5 with no objection. Mr. Dinsmore presented and moved for the admission of Exhibit A1. AAG, Guay admitted the exhibit. He gave Mr. Hall his oath. He asked Mr. Hall if he had any exhibits he wanted to submit. He marked Exhibit J-1, A written statement by Mr. Hall, and Exhibit J-2, Rule Package. He admitted the 2 exhibits without objection. Mr. Hall stated the protocol for decades they've had the trainer responsibility rule. Some portion of that trainer responsibility rule has to do with appropriate testing procedures, and he had a real problem with it. After a race is contested, all the participants and horses are to remain in the racing paddock until the test horses are officially announced from the paddock judge. He provides the test horses to the paddock judge and then he announces so the horse men will know who is going to proceed to the testing area and that would be immediately after the race. As soon as it's appropriate you take your horse to the testing area to be tested. No horse was racing a contest would leave the racing paddock until those test horses are announced. This trainer responsibility rule is stood the test of time. It's a good rule. That rule was violated right off quick. Mr. Dinsmore asked Mr. Hall the horse is to be taken immediately after the race. Mr. Hall stated yes. Mr. Dinsmore asked if there is an inquiry or objection filed in the race when the horses come off the track they are not immediately tagged for test. Mr. Hall stated that's true. Mr. Dinsmore stated that also when horses come off the track after the race the paddock judge does not announce if there's an inquiry or objection the paddock judge does not announce the horses to be tested. Mr.

Hall stated that's correct. Commissioner Kelleher asked Mr. Hall if he repeatedly calls for a special after each race that a horse goes to be tested. Mr. Hall stated that they routinely test the winner and one other horse. More often than not it's horses that finish 2nd or third. If something looks troubling to the state steward, he might call the judge and call for a different horse to be tested. AAG, Guay stated that the rule says in terms of section 46 the trainer shall be responsible for submitting any horse under his or her care to any pre or post-race testing when such a test is requested by the state veterinarian, the state steward or any licensed state official. He asked Mr. Hall how was the request for testing made of Mr. Dinsmore under this rule. Mr. Hall stated that routinely the presiding judge informs the paddock judge of what horses will be tested and then he makes public announcement in the paddock so the horsemen will know who the test horses are for that race that was just contested. AAG, Guay stated that you're describing what the practice is on the date of the offense did that happen. Mr. Hall stated what happens routinely sometimes the test horses are done after each contest is completed. At other times the paddock judge has a conversation with the presiding judge, and he'll give him an agenda for the day as to what races and what the test horses are going to be. It will be the winner always. AAG, Guay stated it says that the trainer is responsible if they're requested to bring the horse to testing. Tell us how he was requested. Mr. Hall stated with public announcement after the race was declared official. AAG, Guay stated that you are describing what happens. Did you hear the announcement? Mr. Hall stated that they don't always hear what's announced in the paddock. Commissioner Shiers stated that's not typically the way when he's raced horses the way they do things particularly at Scarborough Downs. When the horse comes in, they put a clip right in the horse's halter and that horse goes to the testing barn. They do not do any announcing there's a lot of noise in those paddocks. He never heard anybody announcement that this horse or that horse is going to the paddock. He had a tag right on his collar that indicated as soon as he gave the horse a bath, he had to go to the testing barn. It was most always some kind of a conversation and he believes it was the presiding judge, but in his case up there it was the state veterinarian but he thinks those two people the state veterinarian and the presiding judge and the paddock judge they communicate, but they know immediately who's going to that spit box to draw blood. It seems to him what he's hearing from Mr. Hall is that their process down there is kind of hit or miss. Mr. Hall stated that he would say the same to him. Maybe you're not being quite appropriate at Scarborough. AAG, Guay stated that he thinks he heard you answer the question. What the Commissioners need to decide is this is the rule and whether or not there is evidence to find a violation under the rule. Commissioner Timmons asked how long did it take for that race to clear. Mr. Hall couldn't tell him how long it took. This was an interference in the home stretch before the finish at the end of the race. They had a driving violation and an interference, and there was a placing. They had to wait until they had it set up for them to review it. When they made a decision, they immediately contacted the paddock and they go official with the race and the paddock gets that quick call to announce the test horses. The test horses can't be announced until after the race is declared official. Commissioner Timmons asked was there an extra ordinary period of time it took for that race to clear. Mr. Hall stated that objections vary. Some are quite quick if they're quite simple. You have to review it 3 or 4 times. Commissioner Timmons is trying to figure out. Mr. Hall stated that judges will take whatever time appropriate for them to do their work and those times vary quite a bit. AAG, Guay stated that specifically to this race Mr. Hall you've described what generally happens so that is very helpful. Two things that he thinks the Commissioners just touched on. Do you recall regarding the event with Mr. Dinsmore whether there was a tag, or do you have any knowledge of whether there was a tag on the halter on Mr. Dinsmore's horse? Mr. Hall stated that there wouldn't have been a tag on his halter until after the race went official. AAG, Guay stated ok that was helpful. Do you recall what the period of time was you folks were reviewing the race? Was it a long time on this specific race? Mr. Hall stated that it

took a while but not extravagant no; however, both drivers were to some extent at fault. One was certainly more responsible for the interference than the other. AAG, Guay asked if he had a recollection of how much time it took for the judges to decide the race. Was it 10 minutes or a half an hour? Mr. Hall stated probably 5 minutes anyway. Mr. Jennings asked Mr. Hall in order for a tag to be placed on the horse for testing wouldn't the horse need to be in the paddock area. Mr. Hall stated that would be helpful if they had left the paddock when they should have that wouldn't be helpful. Mr. Jennings asked in this case was the horse in the paddock area at the time when the race was declared official. Mr. Hall stated not being there and no one talking about it he believes Mr. Dinsmore had left. Commissioner Kelleher asked Mr. Hall when were you notified the horse was out of the paddock. Mr. Hall stated after that race went official, he got a call from the paddock judge and he said the horse had left the paddock before the official test horses had been announced, and he felt it was inappropriate that that horse shouldn't have left the paddock. He believes the horse was not present in the paddock when the test horses were announced. Commissioner Kelleher asked if the horse was stabled at Bangor. Mr. Hall stated yes it was. Commissioner Kelleher was there any attempt by the paddock judge to send someone out to find Mr. Dinsmore. Mr. Hall stated that the paddock judge didn't sent someone, but the employees hired by the state and supervised by the state steward usually would do that but in this case he believes Ms. Dickison asked someone else to find the horse for her because she figured the younger women she sent to find the horse would get there quicker. Commissioner Kelleher asked if the horse was ever tested. Mr. Hall stated yes, and he believes he referred to that on the chronological explanation. AAG, Guay asked if the horse returned to the testing area to be tested. Mr. Hall stated that that horse was returned by the trainer to the testing area in the paddock and the technician drew blood on that horse. Commissioner Kelley asked Mr. Hall when the race went official your testimony is that when they went to tag the horse he was not there. Mr. Hall stated that's what he understood. AAG, Guay asked the department if they had any additional witnesses at this point. Mr. Jennings stated no. AAG, Guay called Mr. Dinsmore. Mr. Dinsmore stated that Mr. Hall spoke of trainer responsibility in order for a trainer to responsibly to do his job he needs information by officials at the track which it would include tagging a horse after the race and announcement from the paddock judge. The horse was not tagged immediately after the race. Mr. Hall referred to the inquiry within the race. The inquiry was made, he means the objection was made to a driver in the first turn to the patrol judge which was in the car with communications with paddock security and the paddock judge. The paddock judge made no announcement which Mr. Hall talks about trainer responsibility. That announcement is very important information for the trainer to do his job responsibly. As far as the objection in the race goes, Mr. Hall stated he usually calls the first place horse and second place horse. The objection in the race was the 3 horse that finished 4th against the horse that finished 3rd. If Mr. Hall wanted the first place horse and the second place horse tested, they could have been tagged and immediately the announcement could have been made immediately after the race. If he didn't want those two horses to go for a special, they had absolutely nothing to do with the reviewing of the objection to the race that he wanted tested. The horse did leave the paddock. It was 10 minutes before announcement was made for the 2 horses to be tested. His horse isn't a very good actor when he came off the track when the horse was not tagged for the safety of the horse, he took her back to the barn. She doesn't act very well in the paddock after a race. When he heard the 4 and 6 horse was going to be a tested, he immediately brought the horse back to be paddock. The horse was tested. He has quite a lot of other questions he would like to ask Mr. Hall and some other testimony he would like to give. AAG, Guay stated if you have statements ask them now. Commissioner Timmons asked Mr. Dinsmore if he stripped and bathed this mare before she left the paddock. Mr. Dinsmore stated no sir. Commissioner Timmons asked you took the horse back to the barn to do that. Mr. Dinsmore stated yes, he did. Commissioner Timmons asked if he always does that. Mr. Dinsmore

stated yes if he isn't called for a special yes, he does. Commissioner Timmons asked if someone from the state asked him to come back. Mr. Dinsmore stated no one from the state did. A young girl met him when he was half way back and said they wanted him back in the paddock. Commissioner Timmons asked how long after the race was over before you left the paddock. Mr. Dinsmore stated he wasn't sure of the time. He talked with the driver after the race and he suggested some equipment changes and he was probably immediately in front of the paddock judges for 2 to 3 minutes. He went back and took the race halter off the horse and put the barn holder on the horse and he walked the horse back. He would guess 4 to 5 minutes. Commissioner Shiers stated to Mr. Dinsmore you just stated that you were in front of the paddock judge for 2 to 3 minutes after the race. Mr. Dinsmore stated absolutely sir. Commissioner Shiers stated to Mr. Dinsmore you never thought to ask him to get permission to take your horse back to the barn. Mr. Dinsmore stated no sir he did not. Commissioner Shiers stated that's your responsibility. Mr. Dinsmore stated that in Bangor he says he was in front of the paddock judge, the paddock judge does have an office with a window there. He was holding his horse in the area in front of the paddock judge. He does assume some responsibility. Commissioner Shiers stated that you assume all responsibility. You are the trainer and that's a sanction race the race is over and you go back to the paddock you got to get permission to leave it if you're not going to be tested. It's your responsibility to ask that paddock judge that's part of his responsibility to release you. If he didn't release you, you're supposed to be in the paddock. Commissioner McFarland stated to Mr. Dinsmore knowing that you knew at that point that you were pending the inquiry to the number 2 horse in the race. Mr. Dinsmore didn't know who was inquiry at that point. Commissioner McFarland asked you didn't know what position in the race you were. Mr. Dinsmore stated that he knew he finished 2nd but he didn't know an objection had been filed. Commissioner McFarland stated you did know that you were 2nd at that point. Mr. Dinsmore stated yes. Commissioner McFarland stated is it not based on what the judge said, most of the time it's the number 1 horse always and from his experience 90 percent of the time it's the number 2 horse, so he would have thought you might want to hang around just a little bit more to make sure it wasn't you then to leave the paddock area. Mr. Dinsmore stated it's always a random horse. It's not necessarily the number 2. Commissioner Kelleher asked Mr. Dinsmore how long had he been racing horses. Mr. Dinsmore stated 40 years. AAG, Guay asked Mr. Dinsmore when was he first requested to bring the horse to the testing area. Mr. Dinsmore stated 10 minutes after the race. AAG, Guay asked how was that request made. Mr. Dinsmore stated an announcement over the loud speaker saying that the number 6 and number 4 horse would be tested at 7:45 or whatever time. AAG, Guay stated that you admit that you heard the request over the loud speaker. Mr. Dinsmore stated yes sir. AAG, Guay stated had you been required prior to that point to bring the horse to be tested. Mr. Dinsmore stated not to his knowledge. AAG, Guay stated in your mind to your knowledge when were you requested to bring the horse to the testing area. Mr. Dinsmore stated 10 minutes after the race. AAG, Guay stated and that was by the announcement. Mr. Dinsmore stated by the paddock judge. AAG, Guay asked what did you do when you heard the request. Mr. Dinsmore stated immediately took the horse back to the paddock. AAG, Guay asked if there were any other questions. Mr. Jennings asked if he could recall his witness based on the questions and testimony that he heard. AAG, Guay stated that it would be limited to what Mr. Dinsmore just said. He called back Mr. Hall. Mr. Jennings asked Mr. Hall that Mr. Dinsmore testified that there was no interference that involved the 1st and 2nd horse and that based on that the judges could have announced the horses to be tested given that it's usually the 1st and 2nd test. His question is do the judges at Bangor ever announce horses for testing prior to declaring the race final. Mr. Hall stated that he doesn't even think the rulebook allows for that and no they don't. They won't announce any race horses until the race is declared official. AAG, Guay stated to the best of your knowledge you heard Mr. Dinsmore testify that he first heard that he was being requested to bring his horse for testing via an

announcement made by the paddock judge. Do you have any reason to believe that testimony is not accurate? Mr. Hall stated that he thinks it's totally accurate. AAG, Guay stated that you heard Mr. Dinsmore testify that when he heard for the first time the request to return the horse for testing that he did return. He was in the process of returning. Do you have any reason to disbelief or question that testimony? Mr. Hall stated you're saying that he heard it and he was in the stable area. AAG, Guay stated no. Listen to his question. Mr. Dinsmore testified that when he heard the announcement, he was in the process of returning his horse to the testing area. Do you have any reason to believe that's not true? Mr. Hall stated that he can't answer that. AAG, Guay stated do you have any reason to believe that's not true. You either have a reason or you don't have a reason. It's yes or no. Do you have any reason to believe that's not true? The follow up question is if you believe that's not true, he's going to ask you why it's not true. Do you have any reason to believe that Mr. Dinsmore was not bringing his horse back when he heard the announcement? Mr. Hall stated that he doesn't believe he was bringing him back to the race paddock. AAG, Guay stated what is the basis of your belief that he was not in fact bringing his horse back. Mr. Hall stated his reason is logic. Mr. Jennings stated that he believes that he misheard the testimony of Mr. Dinsmore in so much as he testified that he was in the barn when he heard the announcement. You said he was on his way back. AAG, Guay stated as a consequence of hearing the announcement he was on his way back. Mr. Dinsmore testified that he was in the barn and he heard the announcement and he was returning back to the testing area and he met a young lady. Do you have any reason to believe that's not true? That's the testimony in front of us. Mr. Hall stated that he was in the barn area and he heard the announcement and then he proceeded towards the racing paddock with his horse. He believes that's true. AAG, Guay asked Mr. Jennings is the person who met him available here today. Mr. Jennings stated that he's not even sure who it is. Mr. Dinsmore stated that she's not here. The young lady's name is Molly. AAG, Guay stated is there any supplement to the rules or any policy posted in any area that says you can't leave the paddock. Mr. Hall stated if you review all of the highlighted portions of the testing procedures that he had given to the Commissioners he thinks that question might be answered. AAG, Guay stated the decision rest on a theory as he understands your theory. He left the paddock area and therefore he violated the trainer responsibility. The trainer responsibility rule says he has to bring the horse to testing when he's requested. It doesn't say he can't leave the paddock from what he can see in just the plain language of the law. What he is trying to determine is if there is that expectation is it posted or some writing. Mr. Jennings stated that Chapter 11 talks about it. Mr. Hall stated immediately in Chapter 11. That's why they provide a stall in the racing paddock for each horse so they can take their horse back to the stalls that have been given and to not leave the race paddock until you know full well whether you're a test horse or not. AAG, Guay stated the rule says requested. What you're saying is that a trainer is automatically requested. He thinks that's the theory of the case. Mr. Hall stated its common knowledge with race horses of what he just said is true and it's well known because this is the first time, he's had this particular situation and he's been around the track since 1960. AAG, Guay stated to the extent that the trainers know this automatically why is there an announcement made. Mr. Hall stated that they shouldn't be able to get a license, if they don't know that, but they do know it. Mr. Jennings stated that he thinks there is two things going on simultaneously here. The common knowledge is that horses are not to leave the paddock until the announcement is made about which horses are tested. AAG, Guay stated that the Commissioners are enforcing rules. What is the basis of, if there is an amplification of the rule, he's asking for the evidence of that? That needs to be put on the record. Mr. Jennings stated that trainer responsibility is described in two chapters, but Chapter 11 is the testing procedure and it states that horses need to be delivered immediately when requested. AAG, Guay stated is there any evidence that Mr. Dinsmore was not returning the horse to the testing area when he was requested. That's testimony. What is immediately. Mr. Jennings stated he would save

his statement for his closing arguments. AAG, Guay stated that Mr. Dinsmore did not return the horse to the testing area when he was requested. What is the evidence that he did not return the animal? The Commissioners are going to do what they're going to do. Closing arguments. Mr. Jennings stated that in this particular case Mr. Dinsmore testified that he took his horse to the barn prior to the race being declared final and before the announcements were made for testing. Chapter 11 talks about the horses being brought immediately upon request, and what he wants to supplement to the record is that there is a reason why horses ought not leave the paddock prior to testing and that is that it's possible to tamper with the evidence when the horse is unsupervised in so much as there are such things that are referred to as masking agents. Masking agents can be administered for the purpose of masking a prohibited substance so that it cannot be distinguished from other substances in the testing process, so the common knowledge and common practice is that horses should not leave the paddock until it is determined whether or not they need to be tested. That's not what happened in this case and that there is a danger to the integrity of the sport when you take a horse out of the paddock and then bring it back for testing. That is why it is the departments position that the horse ought not leave the paddock and that immediately should be interpreted as immediately available in the paddock area. Mr. Dinsmore stated what he's being charged with is a Class I offense and he takes his trainer's license quite seriously. He's not being charged for leaving the paddock. He's being charged with a Class I offense of a \$500 fine. The charge reads Mr. Dinsmore did fail to take horse Fifty Spender for a test after race 2. He did take the horse to a test. Provided evidence that the horse was tested at the proper time. He didn't do what he was charged with. AAG, Guay closed the hearing for deliberation. Mr. Dinsmore has been charged for failing to take a horse to a test after a race. He would ask that you consider the evidence you heard today whether or not Mr. Dinsmore failed to take the horse to a test when he was requested. He suggested to the Commissioners that there is not an offense that he sees at least in the evidence before him of leaving a paddock. If that's something that bothers you, he thinks you can address it, but the very specific question before you is whether or not there is evidence to support the charge in the charging document that Mr. Dinsmore did fail to take the horse for a test after race 2. Mr. Dinsmore did testify as to whether he did return the animal once he was requested. Mr. Hall did testify as to whether he thought he returned the horse for testing. Mr. Dinsmore asked AAG, Guay a question. He stated he's held an owner, trainer, and groom's license in the State of Maine, Massachusetts, Ohio and the Provinces of New Brunswick and Quebec. Race horses at these venues under many different presiding judges over the last 40 years. As a trainer he needs to be provided information by the presiding judge, paddock judge, and other officials under their supervision to do a responsible job. At every venue that he has raced the presiding judge at the completion of each race has called the paddock judge with the number of the winning horse and the number of any random horse or horses he wants tested. Then those horses are tagged by security and an announcement is made by the paddock judge. The number of horses the judge wants tested that are coming off the track. He would like Mr. Hall to explain the process he used when there is an objection or inquiry in a race. He had several questions regarding the specific race that he was in and some questions on the judges hearing at Bangor. AAG, Guay asked Mr. Dinsmore what the relevance of what Mr. Hall usually does. The violation says that. Mr. Dinsmore stated that it actually has nothing to do with his horse going to test. AAG, Guay stated this is what the Commissioners are here to decide whether this is true in Exhibit 4. He knows they could get into like Bangor does this better, Scarborough does this worse. There was a tag. Not a tag. He's going to suggest to him this is not the question before the Commissioners. The question is "did you bring the horse to the testing area when you were requested. Mr. Dinsmore had no other questions. AAG, Guay suggested to the Commissioners is the proper thing to do is focus on Exhibit 4. That's what he is accused of doing and deliberate. Commissioner Timmons asked for discussion. Commissioner Shiers stated that he believes there was a

violation. Mr. Dinsmore stated that he was for 2 to 3 minutes in presence of the presiding judge. He seems to have 40 years of experience all over the country. He seems to know what everybody else's responsibility is, yet he forgot to ask the paddock judge if he could go back to the barn. Mr. Hall's \$500 fine stands with him. AAG, Guay stated that the form of the motion would be that a finding that Mr. Dinsmore did fail to take the horse for a test after the race. That is the issue. The motion would be whether or not that the Commission finds that the charge in #4 is true. Commissioner Timmons stated before they do that he wants to hear from other Commissioners. He just has a little problem with leaving the paddock and coming back to the paddock and getting the horse tested which he did all of that. The fact that it's not addressed in here is what state law says. Commissioner Kelleher stated based on what he heard for testimony here today from both Mr. Hall and Mr. Dinsmore in the experience that Mr. Dinsmore has in racing begs him to take a position to support the judge's position on the action taken in Bangor. Commissioner Kelley stated that this is a Level 1 or a Level 2. Commissioner Timmons stated failure to comply with as a Level 1 violation of Commission rules. Commissioner Kelley stated that's what he read too. It's a Level 1 and the fine is appropriate under that rather than a Level 2. This says not to exceed. He has to agree with the judge. Commissioner McFarland stated based on the experience that Mr. Dinsmore has in the harness racing industry. He knew full well of what he was doing. Given the opportunity he had to be excused if he had a horse that acts up this would have been the appropriate thing to ask at that point he could leave. He doesn't think that was done. Therefore, he would have to uphold the decision of the judges. Commissioner Timmons asked for a motion. Commissioner Shiers made a motion that the decision that Mr. Hall made regarding Mr. Dinsmore stand. Commissioner Kelleher seconded. AAG, Guay stated he needs to write this up. So, he would like you to agree, so what you are saying is you agreed with the judge, so you agree that Mr. Dinsmore did fail to take the horse for a test after race 2. That is what you are saying. Commissioners agreed. AAG, Guay stated and that's based on the fact that he left the paddock without permission. Is that correct? Commissioners agreed. Commissioner Timmons asked for a vote. Vote 5-0. AAG, Guay stated believe it or not this has been appealed before and he had to explain this to a judge. What you just did is you independently found that Mr. Dinsmore so you're not, so what you're saying is not that you agree with Mr. Hall but rather hearing the same facts you find the same way he did. Commissioners agreed.

- d. **RE: Russell Lanpher, Jr.** Mr. Lanpher is appealing the July 13, 2019 decision of Presiding Judge Charles Malia, at Scarborough Downs, for not placing the leading horse for interference. AAG, Guay opened the hearing on Russell Lanpher, Jr. He gave Mr. Lanpher his oath. He also qualified the Commissioners. Commissioner Shiers attended the race but doesn't remember it. There was no objection to Commissioner Shiers staying as Commissioner. AAG, Guay stated that the Department of Agriculture filed a motion to kick the case out based on a legal argument. They have to decide the motion first. He stated that Mr. Jennings should argue why the complaint needs to be dismissed and then Mr. Lanpher will respond to that; and then depending on the basis either he will rule on it or hand it over to the Commissioners. Mr. Jennings stated that the Department moves to dismiss the appeal on two different grounds. The first one is that Chapter 19 Section 3.1 states that in order for the Commission to take an appeal relating to violations described in Chapter 7, sections 53-61, a driver must have first made a complaint, claim, or objection as required in Chapter 7, Section 55. No such objection, complaint or claim was ever filed. He would like to articulate in his view why it would be important to follow that standard in Chapter 19 and that is because at some point the race needs to be declared final. If it is possible to forever challenge the outcome of the race in terms of the placings based on a review of the video then essentially there is no limitation on when that race is still subject to questioning, and so the rule is specific in that regard because the wagering public ought to be able to know who

finished where in the race and the judges need to be allowed to declare a race final at some point; and that's why objections need to be taken immediately as opposed to days later after the videos have been reviewed by the licensee. The second ground for dismissal relates to what is appropriate subject matter for an appeal hearing. Chapter 21, Section 1.1 provides a definition of what an appeal hearing is supposed to be. It stated that an adjudicatory hearing held to consider whether a determination by racing judges or officials that a horseman violated any of the Commission's rules should be affirmed or reversed. Further in Chapter 21, Section 1.1 it stated that appeal hearings are de novo proceedings which imply that a judges hearing has already taken place, and it will be retried de novo. In Chapter 19, Section 3.1 it states that a final appeal in the case of any person penalized or disciplined by the racing officials may be taken by the Commission, so you have three different sections of rule that are saying what is the purpose and the appropriate subject matter of an appeal hearing and in this case none of those three conditions were met. There was no violation, there was no placing, there was no appeal hearing. None of the conditions have been met so that is the departments argument that this is not a proper appeal. Does not fit the definition of an appeal hearing. Mr. Lanpher stated in the race the horse that was out front down to Scarborough they have a shoot, and the horse tries to go down the shoot the second time around the problem was there was a guy beside him that horse took that horse out. On the board it said inquiry but before it said inquiry, he thought they were going to look into it. When the horses came back from the paddock, in the paddock you know what happens because everybody's talking. His son which was driving his horse said he was going to take his horse down because he wiped the horse out. But they did not take the horse down, but you can see in the view he did wipe the horse out which normally would place him 4th and the one he wiped out would have been placed 3rd. In the race he wouldn't have got 2nd if the guy didn't get wiped out. But the owner of the horse that got wiped out wasn't very impressed. AAG, Guay stated this is a legal argument and whether the various horses were wiped out we'd get to that later. He asked to look at the exhibits. As hearing officer he's going to ask for stipulations here because he doesn't think we can get to a ruling on this without understanding what the facts are, so he's going to ask both of you whether you agree to certain things. There is an agreement between the two parties that this was a violation described in Chapter 7, Section 53 to 61. Is he the gentlemen that committed the violation. Mr. Jennings stated no. AAG, Guay asked if he is the person that filed the appeal. Mr. Lanpher stated yes. AAG, Guay asked how are you related to the horse. Mr. Lanpher stated that he owned the horse that got second. Mr. Jennings stated that Mr. Lanpher is the owner that finished second, but he is not the horse that was allegedly interfered with. AAG, Guay asked if Mr. Lanpher's horse was affected by an event in the race. Mr. Jennings stated yes. AAG, Guay stated that if he understands the departments argument that if there is something that happens on the track that has to do with driving violations the owner can't file an appeal. If you logically read the rule as you're asking us to interpret it. Mr. Jennings stated correct. Commissioner Kelley stated that he thinks the problem here is Mr. Lanpher didn't file the objection. AAG, Guay stated he understands that. It's a legal question. Commissioner Kelley asked how do you circumvent the objection if you don't file an objection. Mr. Lanpher stated the inquiry happened. They looked at it. They didn't have the setbacks then he doesn't know why. AAG, Guay is trying to understand how this case is different from how the Commissioner have already interpreted it. Whether or not you want to overrule what the previous Commissioner has done. You're certainly free to do that. The prior Commission has ruled that appeals have to do with driver specific, and the reason they took that position if you look at section 3 section 1 you look at all of these different rules and you try to read them together and he's not saying it's right or wrong but the prior Commission had said they emphasized the language that said all decisions and rulings of the judges or the officers may be appealed to the Commission in writing within 3 days of the notice of the decision or ruling. The argument is that this broad grant of authority says all decisions and

rulings of the judges may be appealed may be appealed is limited by these certain types of offenses that requires a driver to do it immediately. That was the argument. The Commission previously rejected that because they thought that only applied to a driver and because otherwise the way it would be interpreted is owners, trainers, and other interested parties would not have the ability to appeal any decision of the Commissioner. It would be limited to drivers. One of the concerns was they only take a little tiny piece of the pie and the owners and the trainers may get more piece of the pie, and why is it only the person that has only the little sliver of the pie is the person who can appeal when the person who has the most money at stake can't appeal. That was the logic of that Commission. It sounds like it's the same case all over again. You do not disagree that you are not the driver, so you did not file a complaint, claim, or objection. Commissioner Kelley stated the reason he had a question is how long ago, which prior Commission are you talking about. He's been doing this for 25 years and at different times he can think of two instances where he was the owner and he filed objections and he had appeals; and he went to the Commission and he wasn't the driver and he wasn't the trainer so his question to him is how long has this been in effect. AAG, Guay stated that he remembers the name of the case, but he remembers they were in the labor room at the Legislature and he thinks it might have been Henry Jackson. He remembers Barbara Dresser was the chair. This was the issue and that's the way the Commission voted. He's not saying it was right or wrong. Mr. Jennings stated that he recalls a case where they objected on the same grounds and the hearing officer ruled against us. AAG, Guay stated this was a vote by the Commission, and that was because the Commission had already interpreted its rule. He's mindful now they have new Commissioners. He's already heard several of them say a position that is different than what the prior Commission. Again, this Commission can make new law. This Commission can decide today you know what that might have been the way they did 5 or 6 years ago but that's not the way we're going to do it now. They need to determine whether or not there was some action taken by the judge to indicate that there was some type of objection or something going on to the race that had just occurred. Mr. Jennings wanted to make sure he understood the question. Did the judges file an inquiry during the race in question? He believes the answer is yes. AAG, Guay stated the question could be whether or not the fact an objection or whatever was raised would serve to meet this without having to take the other case on. He said that Mr. Lanpher stated that the driver did not file an objection because the driver understood that the race was already under review. So, what you're saying is the driver thought this was already being looked at. So, what you're arguing is that he didn't need to file one of these because the race was already being reviewed. Commissioner Timmons stated let the judges do the judges job. Mr. Jennings stated to his knowledge an inquiry was raised and the judges reviewed the race to determine whether there was interference or not. AAG, Guay stated that the Commissioners need to determine whether or not the fact that the race was under review. Commissioner Timmons stated it was. AAG, Guay stated whether that is a legitimate excuse for the driver not to have filed an objection. Would you file an objection if the race was already under review? Mr. Jennings stated he thinks you would because every driver has a different perspective and a different complaint. Commissioner Kelley asked if anybody filed an objection. Mr. Lanpher stated you don't have to. Commissioner Kelleher stated we are here at this point in time regarding whether it was properly filed objection in time. He made a motion to kick the case out. It was improperly filed. Commissioner Shiers seconded. AAG, Guay stated to the extent that you're changing the precedent we need to put that in writing. That's not the previous decision. He presumes you're doing it because what you're saying is that all decisions and rules of the judges may be appealed. That only drivers can file objections. Mr. Jennings stated Chapter 19, Section 3.1 2nd paragraph. AAG, Guay stated in order to take an appeal, a driver must have first made complaint, claim, or objection as required in Chapter 7, section 55. So just understand if that's the rule an owner cannot invoke the 3 day. A driver will

have to have done that. Mr. Lanpher stated if the judge says it's final, it's final. End of case. Commissioner Shiers stated there's an unspoken law out there on the racetrack. There are some drivers that do not file a complaint against another driver. If that happens, they know there is an objection we know there is interference and neither driver files an objection at that point in time it's up to the Presiding Judge to take over. If he doesn't the case is closed. AAG, Guay stated so what you're saying is that it's not appealable. Commissioner Shiers stated yes. AAG, Guay stated that the former Commission stated that's not the way they wanted it to roll. He's sure owners in the State of Maine will be happy to know that. Commissioner Timmons stated they have a motion on the floor. AAG, Guay stated you need to decide whether or not that if there's a race violation where the prior Commission said that an owner is not tied to a driver having done something. They're under the 3-day rule. What you're saying is if that driver does not issue an objection and a judge makes a decision like in this case the judge was already reviewing it that judge's decision is not subject to review because a driver did not file an objection. You're saying that an owner, a trainer cannot file an objection if the judge makes the wrong decision. He's heard that 95 percent of the drivers don't file these. So, what you're saying is in this decision if a judge makes a decision it's not reviewable. Commissioner Kelleher stated that doesn't excuse them from their responsibility. AAG, Guay stated that's fine you can take that position but that is what is going to happen. Just be aware that you're changing the precedence. Commissioner Timmons asked Mr. Malia to come up. He asked how he felt that this Commission can deal best with this issue taking the judge into consideration and the owner and the people driving out there in the situation we're in. What would you suggest? Mr. Malia stated a rule change. He agrees with Commissioner Kelley in this sport historically it has been regardless of what precedence that unless a driver puts an objection in for an infraction that occurs on the track there is no appeal process for that person. In this particular case he investigates all breaking horses because a break is a violation. In this case the horse that Mr. Lanpher is referring to which is his horse it was this horse that was driven by Mr. Ingraham made a break, and he had some concern as to whether or not he made a break on his own or he made a break in company. So, he illumined the inquiry sign and he told the announcer he was going to look into what was a possible infraction at the top of the stretch. He talked to the drivers and he got anything but a full-throated complaint by Mr. Ingraham who is laconic, and he talked to Mr. Cushing and he's loquacious. He reviewed the film several times and after discussing it with the other two judges we decided that there was no substantial evidence for placings. One horse was running in slightly, the other one was running out. There was no contact. Mr. Ingraham told him, and he asked Mr. Ingraham why his horse made a break, and he suggested that he may have over corrected which is hardly a full-throated complaint. His fiduciary role as a judge is to the bettor first. He's reluctant to place horses because the bettor only gets one chance and that's him so if he can't defend placings, he doesn't make them. This was a close call no question about it, but there was no objection placed and your rules are very specific about that and without an objection there can be no hearing. Your secondary rule in Chapter 21 states that this would be a de novo hearing and Mr. Lanpher is asking for and that does imply almost explicitly that there must have been a previous tribunal. AAG, Guay stated so to the extent a judge lights the sign up and they make a decision which is what happened here. The logical conclusion of the argument is that nobody can review your decision. Mr. Malia stated without an objection placed without a complaint placed, yes. AAG, Guay stated if the complaint was, you're not responding to a complaint from a driver you are initiating if you will your own complaint your own inquiry so what you're saying is when the judges initiating their own inquiry nobody can appeal that. Is that what you're saying? Mr. Malia stated that's what he is saying, yes. If in fact, there is no complaint and he makes no findings there can be no hearing. The reason there has to be a complaint is so that there can be a hearing and then consequently a de novo appeal hearing. AAG, Guay stated in this case why did you review it if there was no complaint. Mr. Malia

stated there was a breaking horse. He reviews all breaks. They're violations. AAG, Guay stated you review on your on decision. Mr. Malia says he does that hundreds of times. AAG, Guay stated that there's not a complaint you're doing it yourself. He's going to stand in front of a judge at Superior Court and say that those decisions are not reviewable because he is the one that started it. Mr. Malia stated so what you're saying to him is don't put any inquires of your own in. AAG, Guay stated no, he's not saying that. What he is saying is who gets to decide whether you're right or wrong. Mr. Malia stated your rules are specific. Absent a complaint. His decision is final. That's what your rules say. AAG, Guay stated so then would you agree that Superior Court could review your decision. Mr. Malia stated how could they get to Superior Court without a hearing and an appeal hearing. AAG, Guay stated well they can. He stated a party aggrieved by a decision of the Commission may appeal to Superior Court. He just wants to be clear what we are saying by this precedence is that there is going to be a certain type of decision that is made within the harness racing world that the only appeal will be directly to Superior Court. Mr. Malia stated with all due respect to your use of the word precedence you made that ruling. AAG, Guay stated he doesn't believe he did but whether or not he made that ruling he recalls the Commission made the ruling. That's in material. What we have is present tense. What you're saying is from this point forward you're asking the Commission to make a ruling that says if you initiate or any judges initiate a review of a race and you make a decision people cannot have your decision reviewed except in Superior Court. Mr. Malia stated the point is he did not make that he took no action. You're confusing decision with action. The conclusion of the race is to go official. That's not an action. When the priest says the mass has ended go in peace. That's not an action. That's a declaration, so he made a declaration of the race was official. Commissioner Kelley stated he thinks what he is saying that he spoke with both drivers that were involved in the incident and he has much as asked them if they wanted to object and they essentially said no. Mr. Malia stated that is correct. Mr. Jennings stated that he would disagree. Once a judge files an inquiry there can be no appeal. All you have to do is file an objection. He's just looking at the rule and to him if there is a behavior pattern within the driver community that suggest we don't file an objection because we don't want to. Then whose fault is that. Is that the Commission's fault? He would say that you either need to change the rule or you need to observe that the driving violations so that the default setting should be when in doubt file an objection as opposed to only file objections under extreme circumstances that's what he thinks. Commissioner Kelley stated he agreed but if the only person that can file an objection is a driver. We'd probably need to change the rule. Mr. Lanpher stated he agrees with you. A driver doesn't put an objection against a person in a race that he wasn't affected to. In other words, his son sat second and watched what that horse did. The horse tried to go down the shoot the first time around the second time around we knew it was going to happen. It did. Is his son supposed to put in an objection? He was 15 lengths back. He wasn't no part of it. But he knew what was going to happen because it happened the first time around. Mr. Malia stated that in horse racing your son would have no stand. The person who allegedly was interfered with has the standing and he said it didn't happen that way. Commissioner Timmons stated they have a motion on the floor. AAG, Guay stated he thinks he's hearing the Commission would grant the motion to dismiss based on failure for the driver in the race to file an objection. Is that correct. The motion is to grant the dismissal because Mr. Lanpher does not have standing to bring an appeal because a driver did not file an objection in the race in question. Commissioner Kelleher stated yes. AAG, Guay stated that the 5 of you need to decide whether you agree. Commissioner Timmons said there was a second. Is there any further discussion from Commissioners on the motion you just heard? There was none. Vote 5-0. AAG, Guay stated the motion has been granted.

- e. **RE: Hearing on the Horse Supply.** Pursuant to 8 M.R.S. § 271 (7), the Commission will take testimony to determine whether the horse supply in the State has been adequate for the

number of dashes conducted on assigned race dates and may limit the number of dashes that a licensee may race after August 1.

Mr. Greenleaf stated there's been 83 days of racing this year and this goes as of August 17, 2019. There's been a little less of entries compared to last year and one day less of racing from 2018 to 2019. The entries are about 200 less than last year. The same with the horses raced it's 100 less raced this year from last year. The 8 horse fields are up. The 7 horse fields are down by 1 compared to 2018. The 5 horse fields are actually up by 15. The racing seems to be better from what he has, and he hears from everybody that the competitive racing is twice as what it was from last year. He doesn't see there's a warrant to change any dashes or race days from this point on. Commissioner Shiers stated the races have been great this year, they've had very competitive. One thing he has noticed, and he doesn't know if it's related to the trackmaster rating, but he's noticed quite a few pages of horses when he gets his program have made very little money this year. He doesn't know if that's something we should be alarmed about. He was looking at some programs at Scarborough Downs and there were several pages of horses that hadn't even make \$2,500 in 17, 18, or 20 starts. He's not sure that's so much different than it has been. With the trackmaster rating people are racing horses and they know they are not going to lose them in a claimer and so they put them in there. They're not making much money with them. Mr. Greenleaf stated he doesn't know compared to last year, but just from talking with people they've talked about claiming races and not many people claimed horses really a lot anyway. When they did some people didn't like their horses being claimed. Mr. Jennings stated that he's looking carefully at trying to figure out which horses are being shut out. He's going to meet with the race secretaries and kind of go over that. It may be as simple as the groupings that they are using for trackmaster and which numbers they pick. He thinks it something that they as an industry want to take a careful look at. Commissioner Shiers stated what he has noticed with that trackmaster ratings and David Sawyer, race secretary at Scarborough this past weekend he split the divisions up a little bit different rather than using the 60, 65, 70's he's breaking it 60's, 67's, 65, 62's he's kind of drawing in the gap a little. Mr. Jennings stated, and he thinks that's part of the ongoing discussion that they're having. That is possible with the trackmaster if you do 60 to 65 that those horses that are 60's are just never going to win a race. So, what he's doing is trying to adjust to make sure that's not happening. That's a concern and that's something that is important to them. We want to have a meeting with the race secretaries at the end of the year to go over everything, and what they can do to make sure that all of the horses have an opportunity to compete fairly. AAG, Guay stated he thinks they need to. Mr. Jennings stated that the statute says. AAG, Guay read into the record Title 8, Section 271.7. It says "prior to August 31st of each year, the commission shall conduct a hearing to determine whether the horse supply in the State has been adequate for the number of dashes conducted on assigned race dates. If the commission concludes that the horse supply has been inadequate, the commission shall limit to the extent necessary the number of dashes that a licensee may race on any date after August 1st of that year that has been assigned to more than one track. The commission may not restrict the number of dashes to fewer than 8" so he thinks to the extent the Commissioners are satisfied there is sufficient number of horses the motion would be the Commission votes to take no action on the number of dashes awarded for 2019. That would be his respectful recommendation for the motion. Commissioner Kelleher moved the motion made by the AAG, Guay. Commissioner Kelley seconded. Vote 5-0.

4. Overview/Update on Prohibited Substance Testing. Miles Greenleaf will give an overview/update of the prohibited substance testing results.

Mr. Greenleaf stated they have 3 cases from 2018 still pending. Two people 3 cases. They have 2 positive tests from 2019.

5. Other Business

AAG, Guay stated that he would not be available to be hearing officer for the race date assignment hearing. He suggested to the Commissioners to vote at this point in time to name Mark Randlett to be the hearing officer for the Race Date Proceedings. Commissioner Kelleher moved the motion suggested by AAG, Guay. Commissioner Shiers seconded. Vote 5-0.

6. Public Comment

Commissioner Shiers stated one thing he thinks all of his fellow Commissioners realize and troubled him deeply is the fact that people get positive test and they do not show up for their hearing. He mentioned this several times under the guidance of his legal counsel here AAG, Guay. They pretty much have their hands tied because you can't really penalize anybody until they have a hearing. AAG, Guay stated that's not the advice he's given them, so he respectfully disagrees. Commissioner Shiers stated he asked to take the horse down because they had a positive test, and you said they couldn't do it until they had a hearing. If the horse failed the drug test. AAG, Guay said that's different than what you just said. What you said is that people aren't showing up to a hearing and we can't do anything. That's absolutely not true. He's actually told the Commissioners how you can. Commissioner Shiers asked when these people get a positive test how can you assure him that these people are going to be here. AAG, Guay stated he's not familiar that his role as an Assistant Attorney General is to assure anybody shows up. What he can do is give his legal advice and you'll see him more often as a prosecutor so this is what he will do as a prosecutor. He will issue a notice of hearing. If people chose to not show up that's certainly within their right, but what he will do is introduce evidence that they had notice of the hearing. He will then put the case on. He will then ask for a finding of a violation or fine so what you understood to be the law or what you understood his understanding to be the law he will tell you as a prosecutor that's what he plans to do. When he's a prosecutor they will bring people forward. They don't have to be there they just have to have notice that there was going to be a hearing. We will prosecute them. Mr. Jennings stated he may be concerned about continuances. AAG, Guay explained continuances. To the extent that he's a hearing officer. A party files a motion for a continuance if nobody opposes it it's going to be grant. To the extent that you're mad at me for granting continuances when no one's arguing about it he's sorry. Commissioner Shiers stated that the foundation of this whole Commission is when somebody's in violation and they get on the first possible schedule and come down and meet with this Commission. AAG, Guay stated believe it or not the US Supreme Court has a case on harness racing that says that purses and suspensions those are property rights, and because those are property rights there is a certain amount of due process. He thinks it was either the state of Pennsylvania or New York they used to set horses down immediately. And then the US Supreme Court said you know what there isn't any due process for that person. So that's not legal. The US Supreme Court said because we're a government agency this is not a business, we cannot the State of Maine, the State of New York, the State of Pennsylvania, the United States of America cannot take people's property interests away without due process. That's why we no longer set horses down immediately. If you can guarantee an individual an immediate trial and he thinks the US Supreme Court put down a time frame of like 3 to 5 days, then you may be able to do it. Your statute actually contemplates is that the chair of the Commission by themselves can do a hearing. This Commission has chosen not to invoke that except in the Gibbs and Grondin case. If the Commission wishes to do immediate penalties on people like you're describing, he thinks the Commission would have to retool the way it does things. He can provide you the legal advice to get you there, but right now the policy decision has been that the five of you hear cases, the five of you make the decisions. Because of the US Supreme Court case you can't just do a summary penalty. Commissioner Shiers stated that he would like that legal advice for this reason. We have a rule in this book and if you're late getting into the Lasix barn beyond a few minutes, say you're a half an hour late the rule is you've got to be in the Lasix barn 3 hours before your post. If you're late the state vet scratches the horse right, there.

There's no hearing the horse doesn't race that's the rule. His question to him is. If the horse fails the drug test, why can't he go on the steward's list. AAG, Guay stated if the horse fails the drug test prior to a race then the judge can say you know what you're not eligible to race. That's a lot different than someone having competed and you're taking something away from them. Once they win a race or if they've been given a license. You're given a license and he pulls you over which he can't he's a cop and he pulls you over and he says give me your license he can't do that even though he caught you speeding. It's the same idea here. There's a hearing, there's the secretary of state, there's a judge, district court, etc. The US Supreme Court had said a license for someone in harness racing that's a property right so that's why we can't do things to the license and we can't take money away from them. Commissioner Shiers stated he's trying to find a way to close the gap from the time people get a positive test and between the time they get adjudicated. He's been studying the Maine Revised Statute 279-A this Commission has the complete right to put conditional licenses on people. If they act in a manner that is not productive to harness racing, they can put a conditional license on them. He's thinking about doing that to these people who keep skipping their meets and say after you serve your suspension of 30 days you're going to end up with a conditional license and it's going to say something to the effect is if you get another positive test within 30 days, and you don't show up to the meeting this is your hearing right now your license is going to be pulled immediately. AAG, Guay stated there are other laws for example Title 5 has to do with taking peoples license away. It's not only in the harness racing section it says there has to be a hearing to impure a license. So even though you have your harness racing and you guys have quite a bit of freedom within harness racing you're also constrained by all the other laws around harness racing. For example, you can't do rulemaking unless you follow the rulemaking procedure. He has heard from a lot of Commissioners and they all share your frustration and he completely understands it. You are not unique. Other Commissioners before you have had the same concerns. Commissioner Shiers asked if he is willing to go through that legal ramification to show them how to get there. AAG, Guay stated if the 5 of you say they would like to develop a system where the chair can immediately depose of drug cases and change this system. He would be very happy to do that, but the Commissioners had made a decision prior not to do that. He will do whatever the 5 of you want or the majority of you will want to do. Mr. Jennings stated that there was a legal impediment to dispensing with a series of cases. You talked about one that's a year old. There's a reason why that sat there it was because we had to get the law changed. He is sensitive to the fact that continuances are something that the Commission does not want to see abused and they will aggressively pursue processing. The rule says they need to be put on the agenda as soon as possible.

Diann Perkins had a request. She would like to see horses that race at Cumberland or at Fryeburg that are tested if they could expedite those tests because it does affect the finals. She doesn't know how they can do that. In past years, they have asked that request also because you know today that one of the cases you heard had a positive at Cumberland and they went on to win the finals. The other request has to do with her personal thought. She's been very concerned that the non-betting races are not getting the promotion that they need because they race before the races. Maybe she can ask Scarborough to race in between the races that would give the public to see. The other thing that happened at Union they ran the non-bettors before. They were scheduled to go at 1:20, 1:30 and so forth. They ran them before that. Then there was supposed to be a race after the 2nd race and they even ran them before the race. She is concerned because she had someone approach her very upset because they came over 100 miles to see the races. She spoke with Mr. Canney about it. She thinks what happen was they had 14 races and they only had paddock stalls for 7 or 8. She does think if you're the director of racing that they did a darn poor job. They could have asked races 7, 8, and 9 to come later. They had trouble with trailer parking, and it effects their program. They had one horse that didn't even have time to warm up because of this. Whoever is director of racing should be aware of this. She received phone calls about Skowhegan they gave all these horses interference breaks

because of the track. They also had problems with the parade before the races and it interfered with people warming up.

AAG, Guay stated he thought about another solution and it was before your last meeting.

You've gotten sort of a belly full of adjudicatory hearings today. You see the sort of inefficiency and that's just in terms of your time. In terms of behind the scenes the resources these gentlemen put in developing the case and then he needs to focus on other matters before this Commission. In order to do an adjudicatory hearing there's a mandatory notice period. If you really want to have consequences for the participants and animals quickly, allow for consent agreements to occur. That will shorten the period of time by 60 days potentially 90 days potentially 120 days. If you really are serious about getting quick resolution to these violations, then he would suggest you revisit your thoughts and your decisions on consent agreements because if there's a notice of violation the department could go to that person and say here's the consent agreement and then get it done. The penalties would occur if there's a suspension of the horse, if there's a suspension of the person, if there's a purse return that will occur much quicker. He is advocating that if you really are serious if that is the major policy driver of this Commission you have a tool available to you to do that. To the extent that you don't take advantage of it, it's going to cause delay. You want to make people come here you want to go through these proceedings, there is going to be delay. Commissioner Kelleher stated that's understandable. As far as he's concerned, the drug cases they come here.

Commissioner Timmons asked Mr. Sweeney to say what will be happening tomorrow at Scarborough Downs. Mr. Sweeney stated that tomorrow is the Joe Ricci Memorial Trot it's a \$25,000.00 trot race. They have a really good 8 horse fields with horses with State of Maine connections. They are hoping for a good day at the races. In connection with the Harness Racing Commission they've secured their marketing funds from the new promotion board.

7. **Schedule of Future Meetings:**
September 20 and October 25, 2019

8. **Adjourn**
1:20 p.m.